Supreme Court of the United States.

No. 191.—October Term, 1905.

Henry F. Wyman et al., Appellants, vs. Sumner Wallace et al. } Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[April 2, 1906.]

Prior to December 21, 1895, the American National Bank and the Union National Bank, hereinafter called respectively the American and Union Bank, were each engaged in business in the city of Omaha, Nebraska. During that month the American Bank was in such financial condition that it became necessary for it to provide for the payment of a large amount of deposits on or about January 1, 1896, and though possessed of abundant nominal assets did not have sufficient funds to make such payment. It knew that a neglect to pay would precipitate a run and bring on a failure of the bank. Thereupon in order to obtain the money necessary therefor its officers and leading stockholders entered into negotiations with the Union Bank for the payment of its immediate obligations and thus enabling it to secure an opportunity to realize upon its assets. As a result of such negotiations a contract was entered into by and between the two banks through their boards of directors. By its terms the Union Bank was to assume the payment of all the liabilities of the American Bank, receiving therefor cash and such bills receivable as it was willing to accept at par and without recourse. The difference between the amounts so received and the liabilities assumed was to be represented by three non-negotiable promissory notes of the American Bank, the payment of which was to be secured by a pledge of all its remaining assets to Thomas L. Kimball, as trustee. This contract was carried out. The Union Bank moved into and took possession of the offices of the American Bank. Upon adjustment, as above indicated, the difference was found to be $201,000, for which the American Bank executed to the Union Bank three non-negotiable promissory notes, each being for $67,000, and payable in one, two and three years, respectively. In accordance with the contract the remaining assets of the American Bank were placed in the hands of the trustee, Thomas L. Kimball, who proceeded to collect them and apply the proceeds on the notes until his death during the pendency of this suit. Subsequently a successor was appointed, who continued in performance of the trust until the entry of the decree. The execution of the contract of December 21, 1895, by the president

and cashier of the American Bank was directed by resolution of its board of directors. On January 14, 1896, at an annual meeting of the shareholders of that bank, at which was represented 1,665¾ shares out of a total of 2,000, a resolution was adopted instructing the directors to take action looking to the liquidation of the bank. On February 25, 1896, another meeting of the shareholders was held, at which 1,696 shares were represented, and a resolution for voluntary liquidation was adopted by an affirmative vote of 1,639¾ shares. The Union Bank fulfilled its obligations under the contract, having taken up all the liabilities assumed by it. The trustee meeting with little success in collection of the assets, this suit was, after the first note had matured, instituted in the Circuit Court of the United States for the District of Nebraska by Sumner Wallace, a citizen of New Hampshire, to whom the note had been transferred, against the Union Bank, Thomas L. Kimball the trustee, the American Bank and its stockholders, including the appellants. By an amended bill the complainant sought on behalf of himself and all other creditors of the American Bank the winding up of the affairs of that bank, the determination of the amount due upon his note, the ascertainment of all the creditors and the amounts of their claims, the subjection of the remaining assets to the payment of those claims and the enforcement of the liability of the stockholders. He had not reduced the note to judgment prior to the commencement of this suit. Upon a final hearing a decree was entered ascertaining the amounts due the complainant and the Union Bank, (they being the only creditors) after the application of all credits, the number of shares of stock held by each shareholder of the American Bank and directing a recovery of $97.23 on account of each share of stock. This decree was affirmed by the United States Circuit Court of Appeals for the Eighth Circuit, 68 C. C. A. 40; 135 Fed. Rep. 286, from whose decision an appeal was taken to this court.

Mr. Justice BREWER delivered the opinion of the Court.

A matter of jurisdiction is first presented. The note, which is the foundation of plaintiff's suit, is one made by the American Bank to the Union Bank, both located in Nebraska, and under the statute, for the purpose of jurisdiction, to be considered citizens of Nebraska. 25 Stat. 436; sec. 4. The plaintiff is a citizen of New Hampshire. He could not maintain an action against the maker of the note, although a citizen of a State other than that of the maker and payee. 25 Stat. 434; sec 1. But if diverse citizenship was the sole basis of the jurisdiction of the Circuit Court, the decision of the Court of Appeals would be final and there would be no appeal to this court. 25 Stat. 828; sec. 6. But the jurisdiction of the Circuit Court was not invoked on the ground of diverse citizenship—at

least, not on that alone. The case presented was one arising under the laws of the United States. It was a suit to enforce a special right given by those laws. Section 5 220 Rev. Stats. reads: "Any [national banking] association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

By section 5151 Rev. Stats., stockholders in national banks are made liable for "all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such share." Section 2 of the act of June 30, 1876, (19 Stat. 63,) is as follows:

"SEC. 2. That when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established."

More than two-thirds of the stock voted, on February 25, 1896, for a voluntary liquidation, and on April 27, 1896, the Comptroller of the Currency formally approved the liquidation and notified the cashier of the American Bank to that effect.

In proceeding, therefore, by this suit to enforce in behalf of himself and all other creditors of the American Bank the extra liability imposed by Rev. Stats. sec. 5151, a case was presented arising under the laws of the United States, and of which, independently of the matter of diverse citizenship, the Circuit Court had jurisdiction.

The bill is not multifarious. "The two subjects of applying the assets of the bank and enforcing the liability of a stockholder, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank." *Richmond* v. *Irons*, 121 U. S. 27, 50.

It is suggested that no judgment had been obtained upon the note prior to this suit in equity, but as one object of the suit was to subject to the satisfaction of the debt certain property conveyed to a trustee as security therefor, no judgment at law was a prerequisite. *Day* v. *Washburn*, 24 How. 352; *Case* v. *Beauregard*, 101 U. S. 688, 691, in which the court said:

"Without pursuing this subject further, it may be said that whenever a creditor has a trust in his favor, or a lien upon property for the debt due him, he may go into equity without exhausting legal processes or remedies. *Tappan* v. *Evans*, 11 N. H. 311; *Holt* v. *Bancroft*, 30 Ala. 193."

We come then to the final question in the case, and that is whether the notes executed by the American Bank were its valid obligations. And in reference to this question these are the significant facts: The demands against the American Bank were pressing. It had not the money with which to meet them. It arranged with the Union Bank to advance the money for the payment of all its outstanding obligations. When the Union Bank paid these obligations of the American Bank it was the same as though it advanced money to that bank to pay them. To reimburse and secure the former the latter bank turned over certain property, and executed these notes for the balance, securing them by a pledge of all its other assets which were placed in the hands of its president, as trustee.

All the stipulations and agreements made by the directors of the two banks were carried out in good faith; and, with full knowledge of what had been done, the stockholders voted for a voluntary liquidation. The borrowing of the money by the American Bank did not necessarily put it into liquidation. It had a large amount of assets, and if the real had equaled the nominal value of these assets it would have been enabled after discharging its obligation to the Union Bank to continue business. But on an examination the stockholders felt that it was wiser to stop at once. But that decision did not at all impugn the wisdom or *bona fides* of the transaction by which the money was obtained to pay off the pressing demands of the American Bank. The question, therefore, is, whether a national bank, finding itself embarrassed, with a large amount of assets, much in excess of its obligations, yet without the cash to make payment of those which are due and urgent, can borrow to meet those pressing demands. A very natural answer is, why not? It is not borrowing money to engage in new business. It simply exchanges one creditor for others. There may be wisdom in consolidating all its debts into the hands of one person. At least such a consolidation cannot be pronounced beyond its powers. When time is obtained by the new indebtedness (in this case a year) it gives the borrowing bank and its officers and stockholders time to consider and determine the wisdom of attempting a further prosecution of business. In the case of an individual it would be a legitimate and often a wise transaction. It is not in terms prohibited by the national banking act. *Aldrich* v. *Chemical National Bank*, 176 U. S. 618, is very clearly in point. The opinion in that case is quite lengthy and considers many authorities, but the gist of the decision is expressed in these words (p. 635):

"Without further citation of cases we adjudge, both upon principle and authority, that as the money of the Chemical Bank was obtained under a loan negotiated by the vice president of the Fidelity Bank who assumed to represent it in the transaction, and as the Fidelity Bank used the money so obtained in its banking business and for its own benefit, the latter bank

having enjoyed the fruits of the transaction cannot avoid accountability to the New York bank, even if it were true, as contended, that the Fidelity Bank could not consistently with the law of its creation have itself borrowed the money."

We are of the opinion that the notes given by the American Bank for the money advanced by the Union Bank were its valid obligations and can, therefore, be enforced against its stockholders.

The decree of the Circuit Court of Appeals is

Affirmed.

---

192 Peter Frenzer et al., Appellants, *vs.* Sumner Wallace et al.

193 Edgar M. Morsman, Appellant, *vs.* Sumner Wallace et al.

195 George W. McClellan, as Executor, etc., et al., Appellants, *vs.* Sumner Wallace et al.

Appeals from the United States Circuit Court of Appeals for the Eighth Circuit.

These are separate appeals by other stockholders from the same decree, and present no questions other than those considered in the former opinion, and the same decrees of affirmance will be entered.

---

194 William S. Poppleton, Appellant, *vs.* Sumner Wallace et al.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

This case is also an appeal by a stockholder from the same decree, and presents only this difference: This stockholder voted against the resoultions passed by the stockholders looking to a voluntary liquidation. There is, therefore, nothing of a personal estoppel to be adjudged against him, but we do not think that that is material. The requisite amount of stock was voted in favor of what was done in the way of voluntary liquidation, and he as a stockholder is bound by that, although personally he dissented from the action. The same decree of affirmance will be entered in this case.